

WRECKER SERVICES AGREEMENT

This Agreement (the "Agreement") is entered into as of the ____ day of _____, 2009 by and between **the City of Frisco, Texas**, a Texas home-rule municipality, (the "City") and [CONTRACTOR NAMES] a [TYPE OF ENTITY] ("Contractor"), and on the terms and conditions hereinafter set forth.

WHEREAS, the City desires to engage an independent contractor to provide City with wrecker and impound services for the purposes of, among others, towing, impounding and storing, if necessary, vehicles as requested by the City Police Department; and

WHEREAS, City Council of the City of Frisco, Texas, (the "City Council") has investigated and determined that it is in the best interests of the citizens to enter into such an Agreement with the Contractor.

NOW, THEREFORE, for and in consideration of the promises, covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, City and Contractor hereby agree as follows:

Article I Term and Termination

The term of the Agreement shall be for a period of _____ (__) years commencing _____, 2009 (the "Effective Date"), and, unless renewed according to the terms set forth in this Article, terminating _____, 200__ (the "Primary Term").

The Primary Term of the Agreement may be extended by agreement of the parties for an additional _____ (__) year period upon the same terms and conditions as herein set forth or amended. In order for the Primary Term to be extended for a renewal term, Contractor must notify City, in writing, of its desire to extend the Agreement for an additional _____ (__) year period. Such notice shall be given no more than ninety (90) days prior to the end of the Primary Term. City shall, after Contractor gives such notice, have forty-five (45) days in which to notify Contractor of its agreement to extend the term of the Agreement. If City fails to notify Contractor, in writing, of its agreement to extend the Agreement, the Agreement will expire as provided herein.

Except as provided herein, if, at any time, Contractor shall fail to perform the terms, covenants and/or conditions set forth herein, City shall notify Contractor of the reasons in support of City's claim that Contractor has breached the Agreement. Contractor shall be allowed a thirty (30) day period from the date of receipt of said notice from City to remedy any breach. If Contractor fails to remedy any breach during the time period prescribed herein, the Agreement shall terminate without further notice to Contractor.

Article II Rotation List

By entering into this Agreement, the Contractor acknowledges that the Contractor shall be placed on a Rotation List with other contractors to provide the services described herein at the

request of the City Police Department. This Agreement provides no guarantee that Contractor shall be contacted by the City Police Department.

In order to be listed on the Rotation List, the Contractor has provided the City with the following information:

1. Name, address and date of birth of the Contractor;
2. Number of tow trucks proposed to be operated by the Contractor;
3. Address and telephone number of the business location from which the Contractor will operate such wrecker service;
4. Amount and type of tow truck equipment which will be placed in operation along with the following information;
 - a. Year and make of the vehicle.
 - b. Vehicle identification number.
 - c. Vehicle certificate of title number.
 - d. Empty weight.
 - e. Gross weight.
 - f. Current Texas license plate number.
 - g. Sales tax identification number, if applicable.
 - h. A copy of the certificate of registration issued by the Texas Department of Licensing and Regulation.
5. Proof that the Contractor has available storage space that meets the requirements of state law for properly accommodating and protecting all motor vehicles to be removed by Contractor from the places where they are found;
6. Proof of ownership of or access to the use of a vehicle storage facility licensed by the Texas Department of Licensing and Regulation;
7. The names of operators who shall drive the wreckers for the Contractor and the appropriate class of drivers license by number; and
8. Such other information as the Chief of Police shall find reasonably necessary to affect the purpose of this Agreement and to arrive at a fair determination of whether Contractor has complied with the terms of this Agreement.

Article III Scope of Services

The Scope of Services shall consist of the items contained in this Agreement. Contractor will be responsible, at its own cost and expense, to furnish well-trained personnel and appropriate, well-maintained equipment of the highest quality to efficiently and economically perform the services included in the Agreement, providing all necessary supervision of such services and to complete said work in accordance with or above the level of performance set forth in the Agreement.

1. General Requirements:

- a. Contractor shall conduct themselves in a dignified and respectable manner and shall be courteous to the public and shall follow directions of the investigating officers as to the disposition of vehicles to be moved or towed to a place of storage;
- b. Contractor shall have available sufficient personnel and equipment to provide services at all times to meet the needs of the Police Department;
- c. Contractor shall provide three (3) standard duty one-ton wreckers with a five thousand pound (5,000) minimum carrying capacity, and/or one (1) heavy duty wrecker with a twenty thousand pound (20,000) minimum carrying capacity;
- d. Contractor shall ensure that while lifting a vehicle in preparation for towing that all other persons are kept a safe distance away from the tow truck and vehicle to be towed. A safe distance is at least twice the distance between the end of the boom and the hook up point on a vehicle or twice the distance of the cars being lifted, whichever is greater. If a hydraulic lift is being used a safe distance is twice the distance to which the lift arm is extended;
- e. Contractor shall, upon receiving a complaint from any source claiming damage to a vehicle or its contents towed by a tow truck operator the operator, submit a written report to the Chief of Police or his designee within twenty-four (24) hours after receipt of such complaint. Such report shall contain all facts pertinent to the claim or the complaint presented;
- f. Contractor shall respond and proceed to the scene and/or site of a wreck, motor vehicle accident or collision within City's corporate limits and/or follow an ambulance or police car, which is traveling in response to a report of a wreck, motor vehicle accident or collision, within City's corporate limits only after being duly and legally dispatched to the scene and/or site by City or if requested to respond to the scene and/or site by a party involved in the wreck, motor vehicle accident or collision;
- g. Contractor shall ensure that all of its tow truck drivers are trained in safety procedures to, among others, protect the public, any and all property and themselves. In this connection, Contractor shall have monthly training sessions for all of its drivers to update them in proper safety procedures;
- h. Contractor shall maintain inventory and records in accordance with all laws governing a storage facility in the State of Texas and City. In this connection, Contractor shall maintain its inventory, records and vehicles, kept and/or stored in accordance with this Agreement, separate from any other records, inventory and/or vehicles of Contractor. On or before the 15th day of each month throughout the term of this Agreement and any extensions hereto, Contractor shall provide City a monthly report containing the status and/or disposition of each and every impounded vehicle. Contractor agrees that at any time during business hours and as often as City deems necessary, Contractor shall make available to representatives of City for examination all of its records with respect to all matters covered by this Agreement and will permit such representatives of City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date the Agreement is terminated, or for such other or longer period, if any, as may be required by law;
- i. Contractor shall, at all times, perform and provide the services to the City as set forth herein prior to performing and/or providing any of the same or similar services to any other person or entity;

- j. Contractor shall, as requested by City, tow and dispose of junked or abandoned vehicles in accordance with the laws of the State of Texas and City;
- k. Contractor shall perform any other service(s) requested of City which relates to the towing, impounding, storing and/or auctioning of vehicles; and
- l. Contractor wreckers and storage facilities shall be inspected by the City on an annual basis during the term of this Agreement.

2. Equipment Required

- a. Contractor agrees to maintain wrecker equipment with the following requirements:
 - i. Be not less than one ton and be equipped with booster brakes and dual rear wheels.
 - ii. Be equipped with a power winch, winch line, boom (flatbeds require no boom) and lifting capacity of not less than 8000 pounds, which must be a factor-rated lifting capacity.
 - iii. Carry as standard equipment safety chains, fire extinguisher (a minimum of five pounds), crow bar or wrecking bar at least 36 inches in length, broom designed for pushing with a 18 inch head and a handle at least 36 inches in length, shovel with a flat edge at least nine inches wide and a handle of at least 36 inches, an axe, road flares or reflective triangles, a container for carrying glass and debris, string, rope or straps suitable for securing doors, hoods, trunks, etc., and a towing dolly (flatbed shall be excluded on towing dolly).
 - iv. Wreckers will be equipped with outside rearview mirrors, one on each side of the vehicle.
- b. Each heavy-duty tow truck must comply with the requirements in subsection (a) of this section unless this subsection specifies a different requirement.
 - i. Each heavy-duty tow truck must not be less than 2 ½ tons.
 - ii. Each heavy duty tow truck shall be equipped with a power-operated winch, winch line and boom, with a factory-rated lifting capacity of not less than thirty-two thousand (32,000) pounds, single-or double-line capacity.
 - iii. Carry as standard equipment safety chains, fire extinguisher (a minimum of ten pounds) crow bar or wrecking bar at least 36 inches in length, broom designed for pushing with a 18 inch head and a handle at least 36 inches in length, shovel with a flat edge at least nine inches wide and a handle of at least 36 inches, an axe, road flares or reflective triangles, a container for carrying glass and debris, string rope or straps suitable for securing doors, hoods, trunks, etc.
 - iv. Towing dollies are not required.
 - v. Wreckers will be equipped with outside rearview mirrors, one on each side of the vehicle.
- c. An emergency warning light device shall be mounted on the wrecker, amber in color, alternately flashing or rotating, mounted as high as possible and as far to both left side and right side as possible, so as to be visible to the front and rear of the vehicle at all times when in operation. The warning device should be in operation from the time the

tow truck arrives at the scene until the time of departure. The warning devices (amber) may be used, if necessary, for departure at the scene during travel to the storage facility, using the most expedient route. At no time shall a tow truck display a red light to the front of the vehicle.

3. Vehicle Storage Facility

- a. Each Contractor under this Agreement shall provide a suitable place for storage for vehicles towed at the request of the Police Department and such place shall:
 - i. Be located within a reasonable commuting distance (15 miles or less) of the City corporate limits.
 - ii. Be properly licensed and zoned according to the Texas Department of Licensing and Regulation.
 - iii. Hold a minimum of fifteen (15) automobiles and two (2) commercial vehicles.
 - iv. Be enclosed by a metal chain link fence, or other fence of better construction, which is of at least six (6) feet in height. This fence must meet any specific zoning requirements set forth by their respective cities to which they operate in.
 - v. Have a gate which is kept locked when not attended.
 - vi. Maintain all screening, fences and gates in good condition.
 - vii. Be adequately lit for security purposes.
 - viii. Provide a minimum of three (3) parking spaces for customers of the two (2) truck business.
 - ix. Comply with all applicable state laws relative to the operation of a wrecker service and vehicle storage facility.
 - x. Provide a maximum security indoor area for storage of vehicles at the request of the Police Department.
 - xi. Be available for service on a twenty-four (24) hour basis, seven (7) days a week.

4. Response Time

- a. The Contractor will arrive at the location of the vehicle to be towed within thirty (30) minutes after receiving a request for towing. The response time for a heavy duty or specialized equipment tow truck will be forty five (45) minutes. It will be the duty of the Contractor to notify the Police Department if they are unable to make a tow as requested.

5. Duty of Contractor to Clean Street and Remove Debris

- a. The Contractor shall be responsible for cleaning the roadway of glass and debris when responding to a call of a motor vehicle crash, in accordance with the provisions of applicable state statutes.

6. Compliance with Abandoned Motor Vehicle Act

- a. Contractor agrees to comply with all guidelines set forth in the Texas Abandoned Motor Vehicle Act, Tex. Transportation Code, Chapter 683, as amended.

7. Impoundment of Vehicles

- a. All vehicles towed by the Contractor at the direction of the Police Department shall be impounded by such Contractor either at the vehicle storage facility of the Contractor, as described in this Agreement, or at a location designated by the Police Department. Vehicles that have a Police Department hold placed on them shall not be returned to the owner of the vehicle until release of such vehicle is authorized by a Police Department supervisor or investigator.

8. Suspension and Removal from Rotation List

- a. Any Contractor who makes application under this Agreement and is placed on the rotation list and is called by the Police Department under the terms of this Agreement shall be required to respond to any authorized call. The Police Department shall remove the Contractor from the rotation list for any of the following reasons:
 - i. Failure to respond to three (3) consecutive calls.
 - ii. Failure to respond to twenty-five (25) calls within a twelve (12) month period. (Contractors may remove themselves from the rotation list with appropriate notification to the Police Department communications center without the penalty of failure to respond. Removal from the rotation list must be for a minimum of one (1) day-24 hours).
 - iii. Causing undue damage to vehicle picked up or any other act of incompetency of operation.
 - iv. Intoxication or incompetency of a tow truck driver/operator.
 - v. Failure to allow the Chief of Police or his designee to periodically make safety inspections of the tow truck or tow trucks, the tow truck service, and or vehicle storage facility as required herein.
 - vi. Failure to comply with the requirements for required equipment on tow trucks.
 - vii. Failure to comply with any other provision of this Agreement.
 - viii. The making of any false statement as to a material matter in an initial or renewal application.
- b. The name of any such Contractor shall be removed from the rotation list and said Contractor shall not be eligible to have its name replaced on the rotation list for a period of up to twelve (12) months from the date of its removal.
- c. Any Contractor that receives a total of three (3) suspensions in a twelve-month time period shall have its permit terminated immediately. That Contractor shall not be eligible to re-apply for a permit for a twelve-month period commencing on a date of termination.

**Article IV
Responsibilities of City and Police Department**

- 1. The City shall not be responsible for the payment of towing and/or storage charges of any vehicle not owned by the City, and the Contractor may demand payment from the owner

- of the charges incurred in accordance with the schedule described in this Agreement before releasing any vehicle.
2. The Police Department shall dispatch in rotation the wrecker or wreckers required to satisfy any call or request for wrecker service from police officers except in cases where a vehicle is left abandoned on private property and no police action is involved. In such cases, it will be the responsibility of the citizen to request wrecker service.
 3. The Police Department shall have exclusive jurisdiction in response to an accident or arrest involving a non-consent tow, in removing vehicles from the scene of such involvement by Contractor; however, requests by any private citizen in a consent tow or otherwise, shall not affect the rotation schedule.
 4. The Police Department shall keep a log of every call received under this Agreement. The log shall indicate the date, the time of the call, the disposition of the vehicle towed and the date and time of such disposition. If a listed Contractor cannot furnish a wrecker upon being called by the Police Department the next Contractor listed shall be called and the pertinent information noted on the log.
 5. The Police Department shall make a list of contents of the vehicle towed by the Contractor. This list will be completed on the Police Department's vehicle impound sheet. This impound sheet will be signed by the officer completing it and the Contractor. A copy will be retained by the Police Department for future reference and one copy shall be given to the Contractor.
 6. Chief of Police or his designee may inspect any and all wreckers operated by the Contractor and shall maintain the results of such inspection.
 7. Chief of Police or his designee may inspect all wreckers and storage yards owned or operated by the Contractor without notice.

Article V

Rates

A Contractor under this Agreement will not charge any fees in excess of rates already established and listed on the Texas Department of Licensing and Regulation web site, under the non-consent tow fee schedule. These fees will be established by the Contractor and approved by the Police Department. It shall be the responsibility of the Contractor to provide a current non-consent tow fee schedule for the Texas Department of Licensing and Regulation. No other fees may be charged by Contractor in the operation of this Agreement. Failure to comply with the above fee schedule will be cause for, among other things, immediate termination of this Agreement.

Article VI

Insurance

Contractor shall procure and maintain, for the duration of the Agreement, and any extension hereto, insurance against claims for injuries to persons or damages to property which

may arise from or in connection with the performance of the work performed hereunder by Contractor. The cost of such insurance shall be borne by Contractor and a Certificate of Insurance evidencing that such insurance has been procured and is in force will be forwarded to City on or before the Effective Date of the Agreement.

Contractor must procure and maintain the following minimum limits of insurance pursuant to the above-mentioned specifications during the entire Agreement period, including any extensions thereof:

<u>Coverage</u>	<u>Limits of Liability</u>
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00
Bodily Injury Liability (Except automobile)	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
Property Damage Liability (Except automobile)	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
Automobile Bodily Injury (Except automobile)	\$1,000,000.00 each person \$2,000,000.00 each occurrence
Automobile Property Damage Liability	\$500,000.00 each occurrence

The certificates shall contain the following express obligations:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice shall be given to the City of Frisco."

As soon as practicable, but not more than ten (10) days after the execution of the Agreement, Contractor shall have City named as an additional insured on each certificate of insurance except Worker's Compensation and Employer's Liability, providing written evidence of same to City, and shall have each policy including Worker's Compensation and Employers's Liability endorsed to provide a waiver of subrogation in favor of City.

Insurance is to be placed with insurers licensed in the State of Texas and rated A- or better by A.M. Best, or A or better by Standard and Poor's.

Article VII Additional Requirements

City shall have the authority to promulgate other reasonable rules, regulations and requirements as may become necessary to ensure that Contractor adequately protects vehicles

and vehicle contents.

Article VIII Independent Contractor

Contractor is, and shall at all times be, deemed to be an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Agreement. Nothing herein shall be construed as creating the relationship of employer and employee, or principal and agent, between City and Contractor or any of Contractor's agents or employees. Contractor assumes, exclusively, the responsibility for the acts of its employees as they relate to the services provided during the course and scope of their employment. Contractor, its agents and employees, shall not be entitled to any rights or privileges of City's employees and shall not be considered in any manner to be City's employees.

Article IX Participation in City-Sponsored Community Events

Contractor agrees to make every reasonably effort to participate in any and all City-sponsored community events when requested by City.

Article X Inspection

City shall, at all times, have the authority to inspect all of Contractor's vehicles and equipment to ensure compliance with this Agreement.

ARTICLE XI Termination of Agreement and Remedies

Either Party may, upon ten (10) days written notice to the other Party, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, and without prejudice to any other remedy it may have. If City terminates this Agreement due to a default of and/or breach by Contractor and the City incurs an expense in correcting the Contractor's breach, then Contractor shall reimburse the City for any costs associated with City's correction of the Contractor's breach.

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

Article XII Dispute Resolution/Mediation

In addition to all remedies at law, the parties may resolve/mediate any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator.

Article XIII

INDEMNITY

CONTRACTOR SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY’S FEES AND EXPENSES (INCLUDING ATTORNEY’S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONTRACTOR, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FROM WHOM CONTRACTOR IS LEGALLY RESPONSIBLE, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT AND/OR ARISING OUT OF GOODS AND/OR SERVICES PROVIDED BY CONTRACTOR PURSUANT TO THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (HEREINAFTER “CLAIMS”). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM “CLAIMS” IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONTRACTOR AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR’S OR EMPLOYEE’S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONTRACTOR, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS’ COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONTRACTOR IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (THE “JUDGMENT”), THEN CONTRACTOR IS NOT REQUIRED TO INDEMNIFY OR DEFEND THE CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO THE CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY, OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONTRACTOR FOR ALL

REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONTRACTOR THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT, OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, TO CONTRACTOR WITHIN SIXTY (60) DAYS OF THE DATE OF THE JUDGMENT (THE "REIMBURSEMENT ALLOCATION").

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

Article XIV Notices

Contractor agrees that all notices or communications to City permitted or required under this Agreement shall be delivered to City at the following addresses:

City of Frisco
Attn: City Manager
6101 Frisco Square Blvd.
Frisco, Texas 75034

City agrees that all notices or communication to Contractor permitted or required under this Agreement shall be delivered to Contractor at the following addresses:

Attn: _____

Any notice provided in writing under the terms of this Agreement by either party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested.

All notices or communication required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is postmarked by the sending party. Each party may change the address to which notice may be sent to that party by giving notice of such change to the other party in accordance with the provisions of this Agreement.

Article XV Miscellaneous

- 15.1 **Assignment and Subletting** – The Contractor agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Contractor further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Contractor of its full obligations to the City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Contractor, and there shall be no third party billing.
- 15.2 **Successors and Assigns** – City and Contractor, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.
- 15.3 **Severability** – In the event a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained herein.
- 15.4 **Venue** – This entire Agreement is performable in Collin County, Texas and the venue for any action related, directly or indirectly, to this Agreement or in any manner connected therewith shall be in Collin County, Texas, and this Agreement shall be construed under the laws of the State of Texas.
- 15.5 **Execution / Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 15.6 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

- 15.7 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 15.8 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 15.9 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- 15.10 **Sovereign Immunity** – The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 15.11 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 15.12 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 15.13 **No Third Party Beneficiaries** - Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 15.14 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 12 herein is conspicuous and the parties have read and understood the same.

IN WITNESS, WHEREOF, we, the contracting parties, by our duly authorized agents, hereto affix our signatures and seals as of this the ____ day of August, 2009.

**THE CITY OF FRISCO, TEXAS,
a municipal corporation**

By: _____

George Purefoy, City Manager

Date: _____

CONTRACTOR:

a _____

By: _____
Print Name: _____
Date: _____

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared **GEORGE PUREFOY**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the **CITY OF FRISCO, TEXAS**, and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2009.

Notary Public in and for the State of Texas
My Commission Expires:

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledged to me he/she is the duly authorized representative for _____, and he/she executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2009.

Notary Public in and for the State of Texas
My Commission Expires:
